

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 17TH NOVEMBER 2006 / 26TH KARTHIKA 1928

Crl.MC.No. 4840 of 2003-D

CC.873/1997 of JUDL.MAGISTRATE OF FIRST CLASS, KOYILANDY

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PETITIONER: ACCUSED:

**M.N.GANESH, S/O. NARAYANA IYYER,
THEVARULLAPARAMBIL, MOPPILADATH, BALUSSERRY AMSOM
DESOM DESOM, KOYILANDY.**

BY ADV. SRI.B.N.SHIVSANKAR

RESPONDENTS: COMPLAINANT:

**1. K.JAYAPRAKASH BABU, S/O.SEKHARA MARAR,
AGED 34 YEARS, GOVINDA BHAVAN, PANANGAD,KOYILANDY.**

**2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**

**BY ADV. SRI.R.PARTHASARATHY
SMT.S.LAKSHMY
R2 BY PUBLIC PROSECUTORMR.K.G.BHASKARAN**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 17/11/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

K.R. UDAYABHANU, J.

CRL.M.C.NO.4840 OF 2003

DATED THIS THE 17TH DAY OF NOVEMBER 2006

ORDER

The petitioner, who is the accused in C.C.No.873/1997 in the file of the Judicial First Class Magistrate Court, Koyilandy with respect to the offence under Section 138 of the Negotiable Instruments Act, has sought for setting aside the order of the court below in C.M.P.No.4350/2003 declining his prayer to forward the impugned cheque for the opinion of the handwriting expert. It is the case of the petitioner/accused that during the course of examination of the complainant, he has asserted that the entire writings in Ext.P1 cheque are in the handwriting of the petitioner/accused. It is also seen that the petitioner/accused has moved twice earlier vide C.M.P.No.1748/2003 and C.M.P.No.2352/2003 for the same relief. The court had also dismissed the applications over which he had filed.Crl.M.Cs. which were also dismissed vide Annexures A-1 and A2orders.

2. It is pointed out that in the last order of this Court in

Crl.M.C.4039/2003, this Court had permitted the accused to take up any defence before the trial court. The above Crl.M.C.was dismissed mainly on the ground that the contention pressed at present has not been raised at the time when he received notice and also at the stage of Section 313 examination. Thereafter, the accused was examined as DW1 and he has pressed the above contention.

3. Counsel for the respondent/complainant has strongly opposed the application pointing out the only motive of the petitioner is to protract the matter somehow or other. It is pointed out that it is almost a decade since the initiation of the proceedings.

4. On a consideration of the history of the litigation in the instant case, I find that the request is to forward the impugned cheque for the opinion of the handwriting expert at this point of time. It has to be noted that the proceedings under Section 138 of the Negotiable Instruments Act is to be disposed of as far as possible within a period of six months vide Section 143(3) of the N.I.Act. Moreover, the court below has considered the matter in detail and dismissed the application, particularly

pointing out that at the stage of Section 313 Cr.P.C., he has not raised the above contention.

In the circumstances, I find no reason to quash the order of the court below in C.M.P.No.4350/2003. The CrI.M.C.is dismissed with a direction to the court below that the proceedings shall be disposed of at the earliest, at any rate within three months from the date of receipt of a copy of this order. The parties shall appear before the court below on 6-12-2006.

K.R.UDAYABHANU, JUDGE

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